

FILED
GREAT FALLS

2012 SEP 6 PM 2 14

IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF MONTANA
DEPUTY CLERK
GREAT FALLS DIVISION

UNITED STATES OF AMERICA,)	Cause No. CR 11-06-GF-SEH
)	CV 12-69-GF-SEH
Plaintiff,)	
)	
vs.)	ORDER DISMISSING MOTION AND
)	DENYING CERTIFICATE OF
MARSHALL THOMAS PLUMAGE,)	APPEALABILITY
)	
Defendant.)	

On September 4, 2012, Defendant Marshall Thomas Plumage, acting pro se, filed a motion to vacate, set aside, or correct his sentence under 28 U.S.C. § 2255. Plumage currently has an appeal pending before the Ninth Circuit Court of Appeals. Notice of Appeal (doc. 31).

District courts do not consider § 2255 motions while a direct appeal is pending. *Feldman v. Henman*, 815 F.2d 1318, 1320 (9th Cir. 1987) (as amended); *United States v. Deeb*, 944 F.2d 545, 548 (9th Cir. 1991); Rule 5, Rules Governing Section 2255 Proceedings, advisory committee's note (quoting *Womack v. United States*, 395

F.2d 630, 631 (D.C. Cir. 1968)). This is well-settled law. A certificate of appealability is not warranted. *Slack v. McDaniel*, 529 U.S. 473, 484 (2000).

Accordingly, IT IS HEREBY ORDERED:

1. Plumage's motion to vacate, set aside, or correct the sentence (doc. 45) is DISMISSED.
2. A certificate of appealability is DENIED.
3. The Clerk of Court shall enter a judgment of dismissal in Cause No. CV 12-69-GF-SEH.

DATED this 16th day of September, 2012.



Sam E. Haddon
United States District Court